

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)

Massachusetts Department of)
Telecommunications and Energy's Petition for)
Waiver to Implement a Technology-Specific)
Overlay for Area Code Relief in the 508, 617,)
781, and 978 Area Codes)

NSD File No. L-99-17

CC DOCKET 96-98

Massachusetts Department of)
Telecommunications and Energy's Petition for)
Waiver of Section 52.19 to Implement Various)
Area Code Conservation Methods in the 508,)
617, and 978 Area Codes)

NSD File No. L-99-19

New York State Department of Public Service)
Petition for Additional Delegated Authority)
To Implement Number Conservation Measures)

NSD File No. L-99-21

To: The Common Carrier Bureau

OPPOSITION OF PAGING NETWORK, INC.

Paging Network, Inc. ("PageNet"), on behalf of its operating subsidiaries,¹ hereby files these comments in response to the Common Carrier Bureau's request for comment on the petitions filed by the Massachusetts Department of Telecommunications and Energy ("MDTE") and the New York Public Service Commission ("NYPSC") for waiver of various Federal Communications Commission ("Commission") rules governing the use of numbering resources. MDTE filed two petitions for waiver. One petition seeks relief from the Commission's rule that

¹ PageNet is among the largest providers of wireless communications and information delivery services in the world, serving approximately 10 million wireless devices in this nation alone. In the United States, it has operations that serve every state. PageNet has participated in many numbering proceedings at both the federal and state level, and welcomes the opportunity to comment on the petitions of the Massachusetts and New York state commissions.

prohibits the establishment of technology-specific overlays when implementing area code relief.² The other MDTE petition seeks general relief from Commission numbering rules in order to, among other things, institute thousand number block pooling, implement inconsistent rate centers, and implement unassigned number porting.³ Similar to the *Massachusetts Petition for General Waiver*, the *NYPSC Petition* seeks a general waiver of the Commission's rules in order to consider a variety of options, including thousand block pooling, individual telephone number pooling, and interim unassigned number porting.⁴

I. INTRODUCTION AND SUMMARY

In these comments, PageNet submits that the Commission should reject any waiver request that would discriminate against wireless carriers. In previous rulings, the Commission has found that technology-specific overlays have anticompetitive effects on wireless carriers and that conservation methods based on local number portability ("LNP") limit wireless carrier access to numbering resources. Thus, the Commission should reject the *Massachusetts Overlay Petition*, the *Massachusetts Petition for General Waiver*, and the *NYPSC Petition*. In so doing, the Commission should reaffirm that any conservation mechanism adopted must provide wireless carriers with nondiscriminatory access to numbering resources.

² Massachusetts Department of Telecommunications and Energy's Petition for Waiver to Implement a Technology-Specific Overlay for Area Code Relief in the 508, 617, 781, and 978 Area Codes, NSD File No. L-99-17 (Feb. 12, 1999) ("*Massachusetts Overlay Petition*").

³ Massachusetts Department of Telecommunications and Energy's Petition for Waiver to Implement Various Area Code Conservation Methods in the 508, 617, 781, and 978 Area Codes, NSD File No. L-99-19 (Feb. 17, 1999) ("*Massachusetts Petition for General Waiver*").

⁴ New York State Department of Public Service Petition for Additional Delegated Authority to Implement Number Conservation Measures, NSD File No. L-99-21, (Feb. 19, 1999) ("*NYPSC Petition*").

In addition, PageNet submits that the petitions filed by the MDTE and NYPSC are premature. Rather than request specific, limited relief, both MDTE petitions and the NYPSC petition seek a general waiver of the Commission's numbering rules without providing an adequate factual predicate for the relief requested. Indeed, the MDTE and NYPSC present no concrete proposals for Commission evaluation. Only after the MDTE and NYPSC conduct affirmative inquiries and develop specific numbering conservation proposals should the Commission consider any waiver request. Any other approach would render the Commission's national rules a nullity, signaling that waivers are available to any state commission by simply making a request. Such a result requires notice and comment rulemaking and should not be pursued through waiver petitions.

II. THE COMMISSION SHOULD REJECT ANY WAIVER REQUEST THAT WOULD DISCRIMINATE AGAINST WIRELESS CARRIERS

The Commission's previous rulings squarely reject technology-specific overlays and measures that require local number portability ("LNP") and number pooling. PageNet submits that the Commission should reiterate that area code relief and number conservation methods must not discriminate against wireless carriers in denying the instant petitions of the MDTE and the NYPSC.

Since 1995, the Commission has consistently found that technology-specific overlays discriminate against wireless carriers.⁵ In so doing, the Commission explained that:

a successful administration of the NANP should seek to accommodate new telecommunications services and providers by making numbering resources available in a way that does not unduly favor one industry segment or technology and by making numbering resources available in an efficient, timely basis. We believe that the assignment of numbers based

⁵ *Proposed 708 Relief Plan and 630 Numbering Plan Area Code*, Declaratory Ruling and Order, IAD File No. 94-102, 10 FCC Rcd 4596 (1995).

on whether the carrier provides wireless service is not consistent with these objectives and could hinder the growth and provision of new beneficial services to consumers.⁶

Similarly, the Commission has “conclude[d] that any overlay that would segregate only particular types of telecommunications services or particular types of telecommunications technologies in discrete area codes would be unreasonably discriminatory and would unduly inhibit competition.”⁷ The *Massachusetts Overlay Petition* fails to offer any factual basis as to why the overlay it seeks to implement would not inhibit competition. Indeed, the MDTE acknowledges that it has not reached any conclusions at this time.⁸ Consistent with its earlier conclusions, therefore, the Commission should reject MDTE’s request for waiver to implement a technology-specific overlay.

Service-specific overlays are not the only way that the petitions might adversely affect wireless carriers. The Commission has refused to permit state commissions to order wireless carriers to participate in number conservation methods that require number porting or pooling. Foremost, small local exchange carriers and some wireless carriers, such as paging carriers, have no LNP obligations. Any number allocation method that would make numbering resources available to LNP-based carriers at the expense of non-LNP carriers would be discriminatory. In addition, the complexity of issues related to number portability and pooling has caused the Commission to conclude that portability and pooling issues be addressed

⁶ *Id.* at ¶ 29.

⁷ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392, ¶ 285 (1996) (“*Second Report and Order*”) (subsequent history omitted).

⁸ *Massachusetts Overlay Petition* at 5-6.

comprehensively at the federal level, rather than by individual states.⁹ For these reasons, PageNet urges the Commission to reject the MDTE and NYPSC general petitions to the extent that they seek authority to order wireless carriers to report on utilization of thousand number blocks, to return thousand number blocks, or to participate in any number conservation method related to number portability or pooling.

In addition, the Commission should take this opportunity to make clear that any LNP-based number conservation plan must provide for the availability of numbering resources to wireless carriers on a nondiscriminatory basis. It is undisputed that long-term LNP is a prerequisite to successful number pooling of blocks of fewer than 10,000 numbers each,¹⁰ and, as noted, the Commission has held that small local exchange carriers and some wireless carriers, including paging carriers, are exempt from LNP requirements altogether.¹¹ Therefore, in continuing to “decline[] to grant states the authority to order mandatory number pooling,”¹² the

⁹ *Second Report and Order* at ¶ 33 (“If each state commission were to implement its own NXX code administration measures without any national uniformity or standards, it would hamper the NANPA’s efforts to carry out its duties as the centralized NXX code administrator.”).

¹⁰ As the Industry Numbering Committee (“INC”) explained in its recently released *Initial Report To The North American Numbering Council On Number Pooling Version 2* (December 4, 1997). Given the inextricable link between number portability and pooling, INC recognized that it was only fair that “[s]ervice providers should not be required to participate in number pooling before they are required to offer local number portability.” *Id.* at 14.

¹¹ *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8433 (1996); *recon. in part*, 12 FCC Rcd 7236; *further recon.*, 12 FCC Rcd 12281 (1997); Memorandum Opinion and Order, DA 98-1763 (rel. Sep. 1, 1998).

¹² *See Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 214, and 717*, NSD File No. L-97-42, Memorandum Opinion and Order on Reconsideration at ¶ 25 (rel. Sep. 28, 1998) (“*Pennsylvania Order*”). For the same reasons, paging carriers are exempt from responding to data requests designed to elicit the quantity of number blocks and individual numbers that could be made available to other carriers through porting, pooling and mandatory return of thousand blocks.

Commission should make clear that any LNP-based conservation effort must afford wireless providers with nondiscriminatory access to numbering resources.

III. THE PETITIONS FILED BY THE MASSACHUSETTS AND NEW YORK COMMISSIONS FAIL TO PROVIDE A SUFFICIENT BASIS FOR THE COMMISSION TO GRANT A WAIVER OF ITS RULES

While the Commission will grant waiver requests where “good cause” is shown,¹³ the Commission has indicated that it will not “tolerate evisceration of a rule by waivers.”¹⁴ To avoid the evisceration of its rules by waiver, the Commission has consistently taken the position that waiver requests must demonstrate “special circumstances [that] warrant a deviation from the general rule.”¹⁵ Specific to numbering, the Commission has stated that:

We ... encourage state commissions, prior to the release of any order implementing a number conservation plan or number pooling trial, to request from the Commission an additional, limited, delegation of authority to implement proposed conservation methods.... If a proposed conservation method will conserve numbers and thus slow the pace of area code relief, without having anticompetitive consequences, we will consider delegating additional authority to state commissions to use the conservation method.¹⁶

In other words, state commissions must provide the Commission with a specific conservation plan supported by evidence in order to obtain a waiver. The petitions presently before the Commission in these proceedings fail to meet the Commission’s requirements, and thus, the Commission should reject the MDTE and NYPSC requests as speculative.

¹³ 47 C.F.R. § 1.3.

¹⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

¹⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁶ *Pennsylvania Order* at ¶ 31.

In the *Massachusetts Overlay Petition*, the MDTE requests a general waiver of the Commission's rule prohibiting technology-specific overlays.¹⁷ Rather than propose an action plan for numbering relief supported by findings and current circumstances facing the agency, the *Massachusetts Overlay Petition* merely speculates that "the circumstances in Massachusetts may be different from the circumstances in existence when the [Commission] originally prohibited technology-specific or service-specific overlays...."¹⁸ Indeed, the MDTE notes that it "has not made any substantive findings on whether a technology-specific overlay is appropriate at this time."¹⁹ Permitting such conclusory statements to serve as the factual predicate for a waiver request would essentially eviscerate section 52.19(c)(3)(i). Because the *Massachusetts Overlay Petition* fails to present a plan for implementing a technology-specific area code and fails to present evidence regarding the competitive effects of a technology-specific overlay, the Commission should reject the *Massachusetts Overlay Petition*.

The *Massachusetts Petition for General Waiver* and the *NYPSC Petition* go even further by seeking a waiver of the Commission's numbering rules, generally. As MDTE notes, "[w]e have not made any substantive findings on what code conservation methods are appropriate for each area code at this time. However, we would like to have a full range of options available to us as we consider ways to conserve exchange codes...."²⁰ Likewise, the *NYPSC Petition* requests "flexibility to explore [individual telephone number pooling]. If further investigation of this option proves that [it] can be implemented as an efficient and effective

¹⁷ See 47 C.F.R. § 52.19(c)(3)(i) ("No group of telecommunications carriers shall be excluded from assignment of central office codes in the existing area code, or be assigned such area code, based solely on that group's provision of a specific type of telecommunications service or use of a particular technology...")

¹⁸ *Massachusetts Overlay Petition* at 5.

¹⁹ *Id.* at 5-6.

²⁰ *Massachusetts Petition for General Waiver* at 12.

conservation measure, we would implement it in a nondiscriminatory manner.”²¹ Because these petitions fail to present specific recommendations based on facts, the *Massachusetts Petition for General Waiver* and the *NYPSC Petition* fail to meet the Commission’s high standard for granting waivers.

Were the Commission to grant such unsubstantiated and general requests, the Commission’s waiver process would be turned on its head. Rather than requiring a specific action plan based on facts, granting these petitions would signal that waivers are generally available by simply making a request. Such an approach would render the Commission’s national rules a nullity without the benefit of notice and comment. Therefore the Commission should reject the MDTE and NYPSC petitions.

IV. CONCLUSION

For the forgoing reason, PageNet respectfully request that the Commission reject the MDTE and NYPSC petitions for waiver of the Commission’s numbering rules.

Respectfully submitted,

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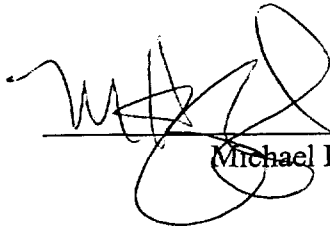
²¹ *NYPSC Petition* at 9.

Certificate of Service

I, Michael Hazzard, hereby certify that I caused a copy of the foregoing *Opposition of Paging Network, Inc.* to be delivered, by hand, to the following:

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